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Prima Cahaya Sdn Bhd v Pemungut Duti Setem

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HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24–40–07 OF 2022
AHMAD KAMAL J
8 MAY 2024

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Revenue Law — Stamp duty — Assessment — Appeal against notice of assessment — Collector of stamp duty assessed stamp duty chargeable on deed of assignment based on 'market value' that was higher than sale and purchase price — Definition and determination of 'market value' of property — Whether stamp duty chargeable on deed of assignment should be based on value as determined by valuer of collector of stamp duty or should be based on sale and purchase price of property — Land Acquisition Act 1960 — Stamp Act 1949 ss 4 & 39

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Prima Cahaya Sdn Bhd ('the plaintiff') had entered into a deed of assignment with Bestinet Sdn Bhd ('Bestinet') wherein Bestinet had agreed to assign and transfer absolutely to the plaintiff all rights, title, interest and benefit accruing or arising under a principal sale and purchase agreement ('the principal SPA') entered into between TRW Boulevard Square Sdh Bhd (receiver and manager appointed) ('the vendor') and Bestinet. It ought to be noted that the sale of the property was conducted through the receiver of the vendor that was appointed by the court. The plaintiff then sought an assessment from the collector of stamp duty, Kuala Lumpur ('the defendant') of the stamp duty chargeable and payable on the deed of assignment. The defendant, instead of assessing the stamp duty chargeable and payable based on the purchase price of RM105.3m which was the transacted price or at its highest at RM117m being the sale price between the vendor and Bestinet under the principal SPA, had taken the view that the 'market value' should be RM227.25m as purportedly assessed by the defendant's valuer, Jabatan Penilaian dan Perkhidmatan Harta, Kuala Lumpur ('JPPH'). The defendant then issued the first notice of assessment and imposed a stamp duty amounting to RM9,074,000 for the deed of assignment together with a penalty for RM453,700 and RM30 for the duplicate copy of the deed of assignment to the plaintiff. Aggrieved, the plaintiff appealed against the first notice of assessment and the penalty but considering that JPPH had decided to maintain the said valuation, the defendant subsequently issued the amended notice of assessment wherein the defendant maintained the total amount of stamp duty to be paid under the notice of assessment. The plaintiff then issued a bank draft as a payment for the notice of assessment but such payment was made under protest. Thereafter, the plaintiff filed the present originating summons ('the OS') to appeal against the notice of assessment under s 39 of the Stamp Act 1949 ('Act 378'). The issue to be determined in the present case was

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whether the stamp duty on the deed of assignment should be on the: (a) value amounting to RM227.25m as determined by JPPH; or (b) value amounting to RM117m as stated in the principal SPA between the vendor and Bestinet; or (c) value amounting to RM105.3m as stated in the deed of assignment between Bestinet and the plaintiff.

Held, allowing the OS with costs of RM5,000 to be paid by the defendant to the plaintiff without the allocator fee:

(1) According to s 4 of Act 378 and read together with item 32(a) of the First Schedule of Act 378, the stamp duty chargeable and payable is calculated based on the monetary value of consideration or the market value of the property, whichever is the greater. In the present case, the property was only transacted at the amount of RM105.3m (money value) whilst both JPPH (RM227.5m) and the receiver's valuer, VPC Alliance (RM170m) had valued the property at a higher amount than the sales amount. Hence, the assessment of stamp duty on the deed of assignment must be based on the market value of the property. In adjudicating the stamp duty on the deed of assignment, it was important for the market value of the property to be ascertained and the stamp duty shall be calculated based on the market value of the property on the day the agreement for sale was executed (see paras 13–15).

(2) Act 378 did not provide for any definition or interpretation of the word 'market value', as such, the definition of market value in the Land Acquisition Act 1960 should be adopted. The definition of market value in the Land Acquisition Act 1960 was consistent with the definition of market value as per definitions in *Malaysian Valuation Standards* (6th Ed) (2019) as followed: 'Market Value is the estimated amount for which an asset or lability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion'. In *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] 1 MLJ 69; [1953] 1 MLRH 564, it was found that the safest guide to determine the fair market value was evidence of sales of the same land or similar land in the neighbourhood after making due allowance for all the circumstances (see paras 17–19).

(3) The court found that the defendant had completely ignored contemporaneous factual evidence of value and instead purported to rely on opinion evidence. The opinion evidence relied on by the defendant did not meet the basic requirements such as the employment of the cost method as the primary method and the employment of other method

only when justified. Even when using the comparison method, the court found that the defendant relied on unsuitable or inappropriate comparables (see paras 88–90).

(4) The court was of the view that it was illogical that the 'market value' as assessed by JPPH which was far higher than the amount anyone was willing to pay in an auction was reflective of a realistic 'market value', a willing buyer and willing seller was ready to transact at without any compulsion bearing in mind the 'market value' as assessed was a value after the pandemic, when businesses and general economy were struggling to pick up and normalise again. The court opined that the sale price of RM117m was the 'market value' as spoken by the 'market' in general. The present owner constituted 'the market' and therefore was prepared and motivated to sell at the best price (ie RM117m) attainable in the open market. Furthermore, the sale was through a receiver appointed by the court who had duties and obligations to obtain the best possible price. In this regard, it was noteworthy that a 'reserve price' was fixed with the court's concurrence based on valuation(s) and not some figure plucked out of the sky (see paras 92–94).

[Bahasa Malaysia summary

Prima Cahaya Sdn Bhd ('plaintif') telah menandatangani surat ikatan penyerahan hak dengan Bestinet Sdn Bhd ('Bestinet') di mana Bestinet telah bersetuju untuk menyerahkan dan memindahkan secara mutlak kepada plaintif semua hak, hak milik, kepentingan dan faedah yang terakru atau timbul di bawah perjanjian jual beli prinsipal ('SPA prinsipal') yang dimeterai antara TRW Boulevard Square Sdh Bhd (penerima dan pengurus dilantik) ('vendor') dan Bestinet. Perlu diingatkan bahawa penjualan hartanah tersebut dilakukan melalui penerima bagi pihak vendor yang dilantik oleh mahkamah. Plaintif kemudiannya memohon taksiran daripada pemungut duti setem, Kuala Lumpur ('defendan') mengenai duti setem yang boleh dikenakan dan perlu dibayar atas surat ikatan penyerahan hak tersebut. Defendan tidak menilai duti setem yang boleh dikenakan dan perlu dibayar berdasarkan harga belian RM105.3 juta yang merupakan harga urus niaga atau paling tinggi ke atas nilai RM117 juta iaitu harga jualan antara vendor dan Bestinet di bawah SPA prinsipal, sebaliknya defendan telah mengambil pandangan bahawa 'nilai pasaran' sepatutnya adalah RM227.25 juta seperti yang dikatakan ditaksir oleh penilai defendan, Jabatan Penilaian dan Perkhidmatan Harta, Kuala Lumpur ('JPPH'). Defendan kemudiannya mengeluarkan notis taksiran pertama dan mengenakan duti setem berjumlah RM9,074,000 untuk surat ikatan penyerahan hak tersebut berserta denda RM453,700 dan RM30 bagi salinan pendua surat ikatan penyerahan hak kepada plaintif. Terkilan, plaintif merayu terhadap notis taksiran pertama dan denda tersebut tetapi memandangkan JPPH telah memutuskan untuk mengekalkan penilaian tersebut, defendan kemudiannya mengeluarkan notis taksiran yang dipinda di mana defendan

mengekalkan jumlah duti setem yang perlu dibayar di bawah notis taksiran tersebut. Plaintif kemudiannya mengeluarkan draf bank sebagai bayaran untuk notis taksiran tersebut tetapi bayaran tersebut dibuat dengan bantahan. Selepas itu, plaintif memfailkan saman pemula semasa ('SP tersebut') untuk merayu terhadap notis taksiran tersebut di bawah s 39 Akta Setem 1949 ('Akta 378'). Isu yang perlu diputuskan dalam kes ini ialah sama ada duti setem ke atas surat ikatan penyerahan hak tersebut hendaklah pada: (a) nilai berjumlah RM227.25 juta seperti yang ditentukan oleh JPPH; atau (b) nilai berjumlah RM117 juta seperti yang dinyatakan dalam SPA prinsipal antara vendor dan Bestinet; atau (c) nilai berjumlah RM105.3 juta seperti yang dinyatakan dalam surat ikatan penyerahan hak antara Bestinet dan plaintif.

Diputuskan, membenarkan SP tersebut dengan kos sebanyak RM5,000 yang perlu dibayar oleh defendan kepada plaintif tanpa bayaran alokator:

(1) Menurut s 4 Akta 378 dan dibaca bersama butiran 32(a) Jadual Pertama Akta 378, duti setem yang boleh dikenakan dan kena dibayar adalah dikira berdasarkan nilai wang balasan atau nilai pasaran hartanah tersebut, mengikut yang mana yang lebih besar nilainya. Dalam kes ini, hartanah tersebut hanya diurusniagakan pada jumlah RM105.3 juta (nilai wang) manakala kedua-dua JPPH (RM227.5 juta) dan penilai penerima, VPC Alliance (RM170 juta) telah menilai hartanah tersebut pada jumlah yang lebih tinggi daripada jumlah jualan. Oleh itu, penilaian duti setem ke atas surat ikatan penyerahan hak tersebut mestilah berdasarkan nilai pasaran hartanah tersebut. Dalam menentukan duti setem ke atas surat ikatan penyerahan hak tersebut, adalah penting untuk nilai pasaran hartanah tersebut dipastikan dan duti setem hendaklah dikira berdasarkan nilai pasaran hartanah tersebut pada hari perjanjian penjualan ditandatangani (lihat perenggan 13–15).

(2) Akta 378 tidak memperuntukkan apa-apa maksud atau tafsiran perkataan 'nilai pasaran', oleh itu, takrifan nilai pasaran dalam Akta Pengambilan Tanah 1960 harus diterima pakai. Takrifan nilai pasaran dalam Akta Pengambilan Tanah 1960 adalah selaras dengan takrifan nilai pasaran mengikut takrifan dalam *Malaysian Valuation Standards* (6th Ed) (2019) seperti berikut: 'Market Value is the estimated amount for which an asset or lability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion'. Dalam *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] 1 MLJ 69; [1953] 1 MLRH 564, diputuskan bahawa panduan paling selamat untuk menentukan nilai pasaran saksama adalah keterangan penjualan tanah yang sama atau tanah yang serupa di kawasan kejiranan setelah mengambil kira semua keadaan dengan sewajarnya (lihat perenggan 17–19).

(3) Mahkamah mendapati bahawa defendan telah mengabaikan sama sekali keterangan fakta kontemporari tentang nilai dan sebaliknya kononnya bergantung pada keterangan pendapat. Keterangan pendapat yang disandarkan oleh defendan tidak memenuhi keperluan asas seperti penggunaan kaedah kos sebagai kaedah utama dan penggunaan kaedah lain hanya apabila terdapat justifikasi. Walaupun ketika menggunakan kaedah perbandingan, mahkamah mendapati bahawa defendan bergantung pada perbandingan yang tidak sesuai atau tidak patut (lihat perenggan 88–90).

(4) Mahkamah berpandangan bahawa adalah tidak logik bahawa 'nilai pasaran' seperti yang dinilai oleh JPPH yang jauh lebih tinggi daripada jumlah yang sanggup dibayar oleh sesiapa sahaja dalam lelongan adalah mencerminkan 'nilai pasaran' yang realistik, yang mana pembeli dan penjual yang sanggup bersedia untuk berurus niaga tanpa apa-apa paksaan dengan mengambil kira 'nilai pasaran' seperti yang ditaksirkan adalah nilai selepas pandemik yang berlaku, apabila perniagaan dan ekonomi umum sedang bergelut untuk pulih dan kembali normal. Mahkamah berpendapat harga jualan RM117 juta adalah 'nilai pasaran' seperti yang dituturkan oleh 'pasaran' secara umum. Pemilik semasa membentuk 'pasaran' dan oleh itu bersedia dan bermotivasi untuk menjual pada harga terbaik (iaitu, RM117 juta) yang boleh dicapai dalam pasaran terbuka. Tambahan pula, penjualan adalah melalui penerima yang dilantik oleh mahkamah yang mempunyai tugas dan kewajipan untuk mendapatkan harga yang terbaik. Dalam hal ini, perlu diperhatikan bahawa 'harga rizab' telah ditetapkan dengan persetujuan mahkamah berdasarkan penilaian dan bukan angka yang diada-adakan (lihat perenggan 92–94).]

Cases referred to

Collector of Stamp Duties v Ng Fah In & Ors [1981] 1 MLJ 288; [1980] 1 MLRA 722, FC (folld)

Kelana Megah Development Sdn Bhd v Kerajaan Negeri Johor and another appeal [2016] MLJU 1649; [2017] 2 MLRA 452; [2016] 8 CLJ 804, CA (refd)

Nanyang Manufacturing Co v The Collector of Land Revenue, Johore [1954] 1 MLJ 69; [1953] 1 MLRH 564 (folld)

Parkwood Palms Sdn Bhd v Pemungut Duti Setem [2021] MLJU 1332; [2021] MLRHU 955; [2021] AMEJ 1096; [2021] 1 LNS 1189, HC (refd)

Legislation referred to

Land Acquisition Act 1960

Stamp Act 1949 ss 4, 12A(b), 16(1), 39, 39(1), (3), (4), First Schedule, item 32(a)

Tharminder Singh (with Carmen Jeow and Aishah Hamri) (Izral Partnership) for the plaintiff.
Muhammad Arif bin Zaini (with Duna Mohd Isa) (Senior Revenue Counsel, Inland Revenue Board Malaysia) for the defendant.

Ahmad Kamal J:

INTRODUCTION

[1] This is an appeal ('encl 1') by Prima Cahaya Sdn Bhd ('plaintiff') by way of originating summons ('OS') dated 19 July 2022 under s 39 of the Stamp Act 1949 against the decision of the Collector of Stamp Duty, Kuala Lumpur ('defendant'). Reference is made to the case stated signed by the defendant dated 6 October 2022 and all of the affidavits filed therein.

[2] The plaintiff seeks, among other things, the following reliefs:

(a) that the decisions of defendant dated 28 June 2022, maintaining on appeal by plaintiff, the revised assessment of stamp duty chargeable on the deed of assignment dated 13 December 2021 between Bestinet Sdn Bhd and plaintiff (deed of assignment) be set aside and reversed;

(b) that the stamp duty chargeable for the said deed of assignment may be assessed by this honourable court;

(c) that the defendant shall repay the excess stamp duty which had been paid by the plaintiff in conformity with the erroneous assessment by the defendant;

(d) that the defendant shall pay interest on the aforesaid repayment at such rate and for such period as this honourable court deems fit and proper;

(e) that the costs of and occasioned by this application be provided for; and

(f) such further or other orders or directions be given as this honourable court deems fit including but not limited to directing the defendant to state and sign a case setting forth, inter alia, question or questions upon which his opinion was required and stating the decision made by him in respect of the assessment now under challenge.

[3] The brief grounds supporting this OS are as follows:

(a) the plaintiff had entered into a deed of assignment dated 13 December 2021 ('deed of assignment') with Bestinet Sdn Bhd ('Bestinet') wherein Bestinet had agreed to assign and transfer absolutely to the plaintiff all rights, title, interest and benefit accruing or arising under a principal sale and purchase agreement dated 6 November 2020 ('principal SPA') entered into between TRW Boulevard Square Sdn Bhd (receiver and

manager appointed) ('vendor') and Bestinet;

(b) the plaintiff then paid the remaining balance of 90% of the purchase price amounting to RM105.3m to the vendor after assuming all rights, title, interest and benefit of Bestinet accruing or arising from the principal SPA;

(c) the plaintiff then through its solicitors had submitted the deed of assignment via STAMPS for adjudication. The Valuation and Property Services Department had then assessed the market value of the property and came up with a notice of assessment indicating the amount of stamp duty to be paid. The plaintiff found that the market value as assessed by the Jabatan Penilaian dan Perkhidmatan Harta, Kuala Lumpur ('JPPH') was way too high beyond the market value of the property that was willing to be paid for by the plaintiff;

(d) the plaintiff being dissatisfied with the notice of assessment issued by the defendant had through its solicitors issued a letter as an appeal to the defendant to reconsider the market value;

(e) the defendant accepted the appeal application and directed the JPPH to reassess the market value. The JPPH however maintained the market value as assessed. A revised notice of assessment was then issued by the defendant; and

(f) the plaintiff being dissatisfied with the revised notice of assessment appealed to the defendant to reconsider the assessment of the market value bearing in mind that the purchase price paid was far less than what was assessed to be the market value of the property.

BACKGROUND FACTS

[4] The background facts gathered from the cause papers affidavit in supports and submission of the parties are largely undisputed and can be summarised as follows:

(a) the vendor was the sole registered proprietor and beneficial owner of all that piece of freehold land held under Geran 826, Lot 4 Precinct 3, Bandar Putrajaya, Wilayah Persekutuan Putrajaya together with: (i) a 15-storey office tower atop a single storey retail podium; (ii) 10-storey office tower a single storey retail podium; (iii) a standalone 2-storey food court; and (iv) a 2-storey basement car park erected thereon bearing the postal address of Menara Tulus, No 22, Persiaran Perdana, Precinct 3, 62100 Putrajaya ('the property');

(b) the vendor had previously charged the property to Ambank Islamic Berhad ('AIB') for four times as security for Islamic financing facilities granted by AIB to the vendor. Due to the failure of the vendor in

A fulfilling its financial obligations towards the financing facilities, AIB took steps to liquidate the vendor and subsequently, the vendor was placed under receivership on 16 November 2017;

(c) upon the appointment of the receivers and managers ('the R&M') on the vendor, the R&M then appointed Messrs VPC Alliance (KL) Sdn Bhd ('VPC Alliance') to prepare a valuation report on the distressed property to determine the estimated market value. This market value was also used as the reserve price when the distressed property underwent the first public auction;

(d) subsequently, on 18 October 2018, VPC Alliance conducted a valuation on the distressed property and has determined the estimated market value to be RM170m or the forced sale value to be RM136m;

(e) based on the valuation report by VPC Alliance, the R&M made an application at the Kuala Lumpur High Court for an order for sale by way of public auction and had fixed the reserve price for this distressed property to be RM170m ('first reserve price');

(f) on 6 September 2018, the Kuala Lumpur High Court granted the order for sale by way of public auction at the reserve price of RM170m and the first public auction was held on 17 January 2019 ('first public auction');

(g) unfortunately, there were no offerors that were interested in purchasing the distressed property during the first public auction. As a result of this, the reserve price went down by 10% from the first reserve price and a new reserve price was then fixed at RM153m ('second reserve price'). A new date was also fixed for the second public auction on 8 May 2019 ('second public auction') which came by and went past without any offerors yet again;

(h) on 29 July 2019, the third public auction took place at a new reserve price of RM 137.7m ('third reserve price') (which is 10% lesser than the second reserve price) as there were no offerors during the second public auction;

(i) it was only on 24 July 2020 that the R&M received a private written offer from an independent purchaser, Bestinet indicating their interest to purchase the distressed property. Bestinet made an offer below the third reserve price. The offer made by Bestinet was RM115m. By a letter dated 7 August 2020, the R&M agreed to sell the distressed property to Bestinet at the price offered by Bestinet;

(j) on 6 November 2020, the R&M on behalf of the vendor entered into a principal SPA with Bestinet where the vendor has agreed to sell the distressed property and Bestinet has agreed to purchase the distressed property at RM117m instead of RM115m ('purchase price');

(k) having paid only 10% of the purchase price (which amounts to RM11.7m) and were unable to complete the principal SPA, Bestinet approached the plaintiff for assistance to complete the transaction on their behalf by assuming all rights, title, interest and benefit of Bestinet as the purchaser. The plaintiff agreed;

(l) on 13 December 2021, Bestinet and the plaintiff entered into a deed of assignment where Bestinet has agreed to assign and transfer absolutely into the plaintiff and the plaintiff has agreed to accept the assignment and transfer of all rights, title, interest and benefit of Bestinet accruing and/or arising under the principal SPA;

(m) after having entered into the deed of assignment and the plaintiff assumed all rights, title, interest and benefit accruing and/or arising under the principal SPA, the plaintiff via their Solicitors, Messrs Izral Partnership made full settlement of the balance 90% of the purchase price amounting to RM105.3m to the solicitors of the R&M, Messrs Foong & Partners on 7 January 2022;

(n) on 13 January 2022, the plaintiff's solicitors, through the e-stamps system, had forwarded the deed of assignment together with the relevant documents to the defendant, for adjudication and registered as Adjudication No H01C1F49E4XW019 (see: *lampiran* B, C and D of the case stated);

(o) upon receiving the relevant documents from the plaintiff's solicitors, the defendant submitted an application to the JPPH on 12 April 2022 as a government valuer to value the said property. On 15 April 2022, JPPH had valued the property with the market value of RM227.25m;

(p) based on the valuation by JPPH for the property, the defendant had, on 18 April 2022, issued the notice of assessment for transfer of property (ad volarem) with the adjudication No H01C1F49E4XW019 and imposed a stamp duty for RM9,074,000 for the deed of assignment together with a penalty for RM453,700 and RM30 for the duplicate copy of the deed of assignment to the plaintiff;

(q) the plaintiff being dissatisfied with the first notice of assessment issued by the defendant had, through its solicitors, appealed to the defendant to waive the penalty ('first appeal'). On 28 April 2022, the plaintiff's solicitors received a telephone call from the defendant's officer wherein during the conversation, the defendant's officer had informed the plaintiff's solicitors to cancel the first appeal and to submit another appeal for the assessment of stamp duty ('second appeal') and that the issue on the waiver of penalty will be dealt with after the second appeal. The first appeal was then cancelled by the plaintiff's solicitors as directed by the officer of the defendant;

(r) hence, the second appeal was filed via STAMPS on 11 May 2022 by way of a letter stating its reasons for appeal to reconsider the purported market value;

(s) the defendant had forwarded the plaintiff's appeal to the JPPH for their re-valuation of the property. On 17 June 2022, JPPH informed the defendant that they have maintained their valuation on the property at RM227.25m. A copy of the JPPH valuation report is exhibited in *lampiran* G of the case stated;

(t) based on the decision by JPPH to maintain the said valuation, the defendant had issued an amended notice of assessment dated 28 June 2022 to the plaintiff and maintained the total amount of stamp duty to be paid under the notice of assessment; and

(u) on 19 July 2022, the plaintiff had issued a bank draft for the amount of RM9,572,730 as a payment for the notice of assessment dated 28 June 2022 under protest. Thereafter the plaintiff filed this OS to this honourable court to appeal against the notice of assessment under s 39 of the Stamp Act 1949.

[5] In essence, the plaintiff sought an assessment from the defendant of the stamp duty chargeable and payable on the deed of assignment. The defendant, instead of assessing the stamp duty chargeable and payable based on the purchase price of RM105.3m which was the transacted price or at its highest at RM117m being the sale price between the vendor and Bestinet under the principal SPA, had taken the view that the 'market value' should be RM227.25m as purportedly assessed by the defendant's valuer, JPPH.

[6] After the hearing, I allowed the plaintiff's OS (encl 1). The grounds for my decision appear below.

THE LAW

[7] The High Court's jurisdiction to hear the present appeal is set out under s 39(1) of the Stamp Act 1949, which states as follows:

> Appeal to High Court
>
> (1) Any person who is dissatisfied with the decision of the Collector under subsection 38A(5) may, within twenty-one days after the person is notified in writing of that decision and upon payment of duty in conformity therewith, appeal against the decision to the High Court by filing a notice of appeal with the High Court and may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required, and the decision made by him.

[8] The High Court's power to grant the relief sought in the present appeal is also provided under ss 39(3) and (4) of the Stamp Act 1949, which reads as follows:

> (3) Upon the hearing of the case the Court shall determine the question submitted, and, if the instrument in question is in the opinion of the Court chargeable with any duty, shall assess the duty with which it is chargeable.
>
> (4) Subject to subsection (4A), if it is decided by the Court that the assessment or additional assessment of the Collector is erroneous, any excess of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the Court to be repaid to the appellant, with or without costs as the Court may determine.
>
> (4A) Nothing in this section shall operate to compel the Collector to refund the excess amount of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid unless the assessment has become final and conclusive in accordance with section 36D.

ISSUES

[9] The issues to be determined in the present appeal relate to the market value of the property which is, whether the stamp duty on the deed of assignment should be on the:

(a) value amounting to RM227.25m as determined by JPPH; or

(b) value amounting to RM117m as stated in the principal SPA between the vendor and Bestinet dated 6 November 2020; or

(c) value amounting to RM105.3m as stated in the deed of assignment between Bestinet and the plaintiff dated 13 December 2021.

THE DECISION OF THE COURT

[10] The plaintiff in this case has submitted a deed of assignment dated 13 December 2021 for the adjudication of stamp duty. The deed of assignment as an instrument to transfer all rights, title, interest and benefit accruing and arising under the principal SPA is chargeable under item 32(a) of the First Schedule of the Stamp Act 1949 read together with s 4 of the Act.

[11] Section 4 of the Stamp Act 1949 reads as follows:

> 4 Instruments chargeable with duty
>
> (1) Subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of this Act, be chargeable with the several duties specified in such Schedule.

[12] Item 32(a) of the First Schedule of the Stamp Act 1949 reads as follows:

Item	Description of Instrument	Proper Stamp Duty
32	CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:	
	(a) On sale of any property (except stock, interest, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c)).	For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater — (i) RM1.00 on the first RM100,000; (ii) RM2 on any amount in excess of RM100,000 but not exceeding RM500,000; (iii) RM3 on any amount in excess of RM500,000; (iv) RM4 on any amount in excess of RM1,000,000.
	(h) Of any property by way of gift (whether by way of voluntary disposition or otherwise)	See Gift and sub-s 16(1)
	(i) Of any kind not otherwise specially charged with duty	RM10

[13] According to s 4 of the Stamp Act 1949 and read together with item 32(a) of the First Schedule of the Stamp Act 1949, the stamp duty chargeable and payable is calculated based on the monetary value of consideration or the market value of the property, whichever is the greater.

[14] In the present case, the property was only transacted at the amount of RM105.3m (money value) whilst both JPPH (RM227.5m) and VPC Alliance (RM170m) had valued the property at a higher amount than the sales amount. Hence, the assessment of stamp duty on the deed of assignment must be based on the market value of the property.

[15] In adjudicating the stamp duty on the deed of assignment, it is important for the market value of the property to be ascertained and the stamp duty shall be calculated based on the market value of the property on the day the agreement for sale was executed.

[16] Section 12A(b) of the Stamp Act 1949 provides that:

> *12A Assessment of the value of property under transfer or settlement*
>
> Where an instrument is chargeable with duty under Item 32(a) of the First Schedule, *the date for determining the market value* of any property being transferred, settled or gifted shall be —
>
> (a) ...
>
> (b) In the case of a transfer implementing a sale under a duly stamped agreement of sale and purchase, *the date of execution of the agreement*;
>
> (c)–(e) ... (Emphasis added.)

[17] The Stamp Act 1949 does not provide for any definition or interpretation of the word 'market value'. Therefore, as per decision of Suffian LP (as he then was) in the case of *Collector of Stamp Duties v Ng Fah In & Ors* [1981] 1 MLJ 288; [1980] 1 MLRA 722, the definition of market value in the Land Acquisition Act 1960 should be adopted:

> [21] It is common ground that in determining the *market value, nowhere defined in the Ordinance, the courts should be guided by the principles that apply under the Land Acquisition Act — namely, market value is the price which a willing seller not obliged to sell, might reasonably expect from a willing purchaser with whom he was bargaining for sale and purchase of the land* (*Nanyang Manufacturing Co v CLR Johore* [1954] 1 MLJ 69; [1953] 1 MLRH 564) and this amount can best be determined by looking at recent sales of comparable land in the vicinity ... (Emphasis added.)

[18] The definition of market value in the Land Acquisition Act 1960 is consistent with the definition of market value as per definitions in *Malaysian Valuation Standards* (6th Ed) (2019) which were quoted by both, JPPH and VPC Alliance in their Valuation Report as follows:

> Market Value is the estimated amount for which an asset or lability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

[19] In *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] 1 MLJ 69; [1953] 1 MLRH 564 it was found that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighborhood after making due allowance for all the circumstances.

[20] In concluding what the 'market value' should be, both the plaintiff and the defendant's valuer had adopted several valuation methods. The plaintiff's valuer had adopted the comparison method and the investment method, whereas the defendant's valuer had adopted the cost method and the

comparison method as seen in their respective valuation reports (see: 'Lampiran A' of the case stated for the plaintiff's valuation report and 'Lampiran G' of the case stated for the defendant's valuation report).

[21] Both valuers had also affirmed their respective affidavits as corroborating evidence to support or to defend their valuation which is:

(a) *afidavit jawapan pegawai penilai* affirmed by Mohd Izudin bin Nordin the valuer officer of JPPH Cawangan Wilayah Persekutuan (afidavit JPPH) dated 24 March 3023 ('encl 12'); and

(b) affidavit affirmed by Zoinita bt Zainuddin, the valuer of VPC Alliance, dated 28 April 2023 (afidavit VPC) ('encl 14').

THE PLAINTIFF'S VALUATION

[22] The plaintiff had come up with a valuation report issued by a private valuer, VPC Alliance. Based on the valuation report by VPC Alliance, the market price of the property is suggested at RM170m, the sum which is also higher than the transacted price of RM105.3m between the plaintiff and Bestinet.

[23] It is to be noted that the plaintiff had earlier relied on the VPC Alliance valuation report dated 18 October 2018 which suggested that the value of the property is RM170m (see: exh P3 of encl 2 (first valuation report)).

[24] The defendant thereon had objected to the said valuation as it was made prior to the date of the transaction between the plaintiff and Bestinet dated 13 December 2021.

[25] Upon the defendant's aforesaid objection, the plaintiff thereafter came up with the new valuation report from the same valuer ie VPC Alliance dated 6 January 2023 ('second valuation report'). Based on the second valuation report, the market value of the property is valued at the same price as the first valuation report which is RM170m.

[26] In coming to the market price of the property in the second valuation report, VPC Alliance used the comparison method and the investment method. For the comparison method, VPC Alliance considered three transactions as extracted from the Selangor and Wilayah Persekutuan Kuala Lumpur JPPH Department as follows:

Comparison Method

Property	Detail Transaction
Menara L&G	– Precint 3

Property	Detail Transaction
	– Transaction — 9 April 2013 – Floor Area 132,687psf – RM72,490,000 (RM546psf) (yet to be constructed)
Axis Eureka (Mercu MQA)	– No 3539, Jalan Teknokrat 7, Cyber 5, Cyberjaya – Transaction — 25 October 2016 – Floor Area — 117,618 psf — Consideration - RM56,132,075 (RM477 psf)
Quill Building 5	– No 3500, Jalan Teknokrat 3, Cyberjaya – Transaction — 11 December 2020 – Floor Area — 81,602 psf – Consideration — RM45,000,000 (RM551 psf)

[27] Based on the above comparison, VPC Alliance had suggested that the value of the property is RM170m.

INVESTMENT METHOD

[28] Further, VPC Alliance had also produced their valuation report by using the investment method. The investment method of valuation is to value the properties which entails the capitalisation of the net income of the property ie the gross market rental value less current maintenance expenses and outgoings. Based on the investment method, the value of property is calculated as follows:

BASED ON INVESTMENT METHOD

Gross rental per month 349,103.00 sqft @	RM6.80*1	RM2,373,900.40
Gross rental per annum		RM28,486,805.00
Less outgoings @	25% *2	RM7,121,701.20
Net rental per annum		RM21,365,104.00
Less voids @	40% *3	RM8,546,041.44
		RM12,819,062.00
Year purchase in perpetuity @	7.5%	13,3333
		RM170,920,401.50
	Say	RM170,000,000.00

NOTES

*1 The rental of RM6.80 is based on the existing rental paid by the 2 Government Departments inclusive of the car parking bay plus service charges.

*2 Outgoings are based on the industry market, namely RM1.50 to RM1.80 per square foot which include property management fees.

*3 Based on current occupancy rate of 47% and in 2022 at 0%, we have adopted a void at 40% assuming the office market in Putrajaya will improve in the future.

THE DEFENDANT'S VALUATION

[29] In the current appeal the JPPH had explained that they had used the three methods of valuation in coming to the market value of the property consisting of the costs method, comparison method and investment method. The results of the valuation were as follows:

Bil	Kaedah Nilaian	Nilaian	Perbezaan dengan Nilaian yang dicadangkan
1	Kaedah Kos	RM227,250,000	Nilai yang dicadangkan
2	Kaedah Perbandingan	RM239,350,000	5%
3	Kaedah Pelaburan	RM241,300,000	6%

[30] Based on the JPPH valuation report dated 5 August 2022, the JPPH summarised their valuations by using the comparable method and cost method. Based on both valuations, JPPH had chosen the cost method approach which resulted in the valuation of RM227.25m which is the lowest valuation in comparison to the other methods of valuation.

COST METHOD

[31] In using the cost method, JPPH had valued the land and the buildings in coming to the costs method of valuation as explained on pp 20 to 23 of the valuation report.

[32] With regards to the value of the land, JPPH had made four comparisons of land transactions nearby to the property and concluded that the reasonable value of the land of the said property was at RM5,400psm (see: pp 12–15 of the JPPH valuation report).

[33] Further, in calculating the cost of the buildings, JPPH referred to *JUBM and Arcadis Construction Cost Handbook Malaysia 2021* and proposed the amount of RM5,000psm as the costs of buildings (see: pp 22–23 of the JPPH valuation report).

[34] Based on the above consideration and method of valuation, JPPH

derived at the value of RM227.25m for the said property.

COMPARISON METHOD

[35] JPPH in using the comparison method had used four comparisons of properties transacted within the vicinity of the property as follows:

Buildings	Details
Menara MRCB @ Putrajaya	– Lot 19, Precint 2 – Valuation date — 3/6/2016 – Land Area — 2,813.17 MP – Consideration — RM370,704,021
Menara Tulus	– Lot 4, Precint 3 – Valuation date — 11/6/2012 – Land Area — 6,157 psm – Consideration — RM335,000,000
Menara Ikhlas	– Lot 5, Precint 3 – Valuation date — 11/6/2012 – Land Area — 13, 456 psm – Consideration — RM640,000,000
Bangunan Lestari Kumpulan Emkay	– PT 12060 Cyberjaya – Valuation date — 26/9/2011 – Land Area — 19,550 psm – Consideration — RM240,000,000

[36] Based on the above comparisons JPPH had summarised that the adjusted value rate ranged from RM8,000psm to RM11,600psm for the properties transacted nearby to the said property. Therefore, the value of the property is calculated at RM8,000 psm as follows:

	Luas Lantai (mp)	Kadar (RM)	Nilai (RM)
i)	Keluasan NFA 29,920.96	8,000	239,367,680
		Katakan @	239.350,000

[37] The details of the valuation method by comparison were produced in encl 1 of the JPPH valuation report.

[38] Based on both of the above methods of calculation, the JPPH officer had summarised that the difference between both the costs method and comparison method is about 5% and JPPH had chosen the lowest value of RM227.25m instead of RM239.35m.

A **[39]** Having perused the cause papers and the evidence produced before this court ie the comparable put forward as evidence of value in the valuation report relied on by the plaintiff and defendant. I am of the view that the stamp duty chargeable for the deed of assignment dated 13 December 2021 should be on the value amounting to RM117m as stated in the principal SPA between the vendor and Bestinet dated 6 November 2020 based on the reasons stated below.

B

DOUBT AS TO THE JPPH VALUATION

C **[40]** Upon perusal of the defendant's valuation, I find that there is a discrepancy in terms of the timing of the purported valuation by JPPH. In this case, the first notice of assessment is dated 18 April 2022 whilst the second notice of assessment is dated 28 June 2022.

D **[41]** However, the valuation report relied on by the defendant is dated 5 August 2022. Obviously, the valuation report was prepared after the event and was neither prepared nor could have been relied on as a basis for the first or second notices of assessment.

E **[42]** Since the defendant's valuer had in its report stated that site visit of the property only took place on 2 June 2022 (which is after the appeal on the stamp duty payable), how did the defendant's valuer come to the conclusion that the purported 'market value' as assessed is a fair and reasonable 'market value' when the first notice of assessment was issued?

F

[43] The defendant did not produce any informal or preliminary report or correspondence suggesting that an assessment was indeed done at the point when the defendant claims an assessment was done. Thus, this court views that it is apparent that a proper valuation was never conducted prior to the issuance of the first notice of assessment, and the defendants' belated valuation report produced and relied on does not reflect a fair valuation as it is nothing more than an afterthought in justifying the stamp duty charged.

G

H **[44]** Therefore, in assessing the comparison put forward as evidence by the defendant, this court has exercised caution in the treatment of the defendant's delayed valuation report which is inadequate, unfair and serves merely as an after-the-fact attempt to justify the stamp duty charged.

I

COMPARABLE USED BY THE JPPH — COMPARISON METHOD

[45] This court is of the view that in assessing a valuation, the primary method should be the comparison method. Alternative methods of valuation

should only be deployed if the primary method is unsuitable upon proper justification.

[46] *The Malaysian Valuation Standards* (6th Ed) (2019) para 7.1.4 mandates the initial use of the comparison method before any other method is used and provides that the cost method shall be the last approach.

[47] The defendant purports to rely on a valuation done by JPPH using both the cost and comparison methods but opted to rely on the cost method to arrive at the valuation for purposes of stamp duty assessment.

[48] In doing so, I find that neither the defendant nor JPPH had given any reason or justification to jettison the comparison method as the primary method.

[49] It is to be noted that it is a requirement under the Land Acquisition Act 1960 for a comparable to be successfully transacted. This court takes the view that this is a principle for property valuation irrespective of the reason for undertaking a valuation. There is no reason to deviate from this principle of general application.

[50] This is similar to the definition of market value which is silent in the Stamp Act 1949 but has been judicially explained in a plethora of cases by making reference to the Land Acquisition Act 1960.

[51] This proposition although emanating from land acquisition matters was nevertheless applied by the High Court in *Parkwood Palms Sdn Bhd v Pemungut Duti Setem* [2021] MLJU 1332; [2021] MLRHU 955; [2021] AMEJ 1096; [2021] 1 LNS 1189.

[52] The Court of Appeal in the case of *Kelana Megah Development Sdn Bhd v Kerajaan Negeri Johor and another appeal* [2016] MLJU 1649; [2017] 2 MLRA 452; [2016] 8 CLJ 804 held that:

> [52] ... a sale and purchase agreement which is uncompleted is of no relevance ...

[53] Given the above, this court views that comparable used must have been successfully transacted.

FOURTH, SIXTH AND SEVENTH COMPARABLES

[54] Having perused the defendant's valuation, I find that the fourth, sixth and seventh comparables relied on by the defendant are inappropriate

comparables as these were never successfully transacted making it of no relevance.

[55] The fourth comparable — empty land is a land bearing title particulars of GRN 803, Lot 19, Presint 2, Bandar Putrajaya, Putrajaya ('fourth comparable — empty land'). The date of transfer for this comparable was on 27 August 2013. It was stated in the JPPH valuation report that the seller of this property was Putrajaya Holdings Sdn Bhd and the buyer is Arch Angel Capital Sdn Bhd (see: exh 6, p 115).

[56] However, the land search on the fourth comparable — empty land, it was found that that transaction was not completed. Presently, MRCB Putra Sdn Bhd is recorded as the buyer of the fourth comparable — empty land but the circumstances of the transaction are not disclosed. In any event, further checks showed that this fourth comparable — empty land is also no longer empty as it appears that a bespoke building was erected on the land by MRCB Putra Sdn Bhd in 2016 for Pertubuhan Keselamatan Sosial (PERKESO).

[57] The building and the land were also relied on as an en-bloc comparable by the defendant in the JPPH valuation report which will be discussed below in paras 75 to 79.

[58] The defendant had used the same land as comparables, however, I find that it had deliberately left out the fact that the fourth comparable — empty land was no longer empty in employing the comparison method. Further, I find that the fourth comparable — empty land can no longer stand as a comparable as the sale of the land was never transacted with Arch Angel Capital Sdn Bhd, but instead sold to MRCB Putra Sdn Bhd (see: affidavit plaintiff (No 6) afidavit tambahan (encl 29) exh P20)).

[59] The sixth comparable — Menara Tulus is of a building bearing the title particulars of GRN 826, Lot 4 Presint 3, Bandar Putrajaya, Putrajaya which is also the subject property in this proceedings. It was stated in the JPPH valuation report that the date of transfer for this comparable was 11 June 2012 and that the seller of this property was the vendor and the buyer is Nursi Properties Sdn Bhd ('Nursi Properties') (see: exh 6, p 117).

[60] There is no record indicating that this transaction was ever completed. On the contrary, I find that the official records show that Nursi Properties was ordered to be wound up on 24 July 2013 and subsequently placed under receivership.

[61] The plaintiff had purchased the property directly from the vendor (and not Nursi Properties) through a deed of assignment involving Bestinet.

[62] Therefore, I believe that this sixth comparable — Menara Tulus relied on by the defendant in its valuation report is not a suitable comparable as the transaction between the vendor and Nursi Properties at the price of RM335m was not complete (see: exh P25, P26 and P27).

[63] The seventh comparable — Menara Ikhlas is of a building bearing the title particulars of GRN 827, Lot 5 Presint 3, Bandar Putrajaya, Putrajaya ('Menara Ikhlas'), a neighbouring building to Menara Tulus. It was stated in the JPPH valuation report that the date of transfer for this comparable was on 11 June 2012 and that the seller of this property was Boulevard Plaza Sdn Bhd and the buyer is Nursi Properties (see: exh 6, p 118).

[64] It is to be reminded that Nursi Properties was placed under receivership and wound up on 24 July 2013.

[65] Further, the value that the property was said to be transacted upon in the transaction was at RM640m. However, from the official land search conducted by the plaintiff's solicitors, it shows that the property was never transferred to Nursi Properties and the registered owner is still Boulevard Plaza Sdn Bhd.

[66] Therefore, I am of the view that the defendant's reliance on seventh comparable — Menara Ikhlas does not have a leg to stand as the sale was never completed in the first place (see: exh P28).

FIRST, SECOND, THIRD, FIFTH AND EIGHT COMPARABLES

[67] The first comparable is a transaction involving three lands bearing the title particulars of GRN 1839 Lot 87, GRN 1844 Lot 88, GRN 1845 Lot 89, Presint 4, Bandar Putrajaya, Putrajaya ('first comparable — empty land'). The date of transfer for this comparable was on 13 September 2019. It was stated in the JPPH valuation report that the seller of this property was Lembaga Tabung Haji ('LTH') and the buyer is Urusharta Jamaah Sdn Bhd ('UJSB') (see: exh 6, p 118).

[68] The first comparable — empty land was acquired by UJSB, a government-owned company, specifically the Ministry of Finance, from LTH. It is a matter of public record that UJSB is a special purpose vehicle set up by the Ministry of Finance with the view to stabilise the financial position of LTH in 2018 to 2019.

[69] It is also publicly known that UJSB had bought over some of the under-performing assets of LTH at a premium to help normalise LTH's balance sheet. These assets including the first comparable — empty land

bought at book value instead of market value for that reason.

[70] Hence, I am of the view that it was clearly not a transaction made on a 'willing seller; willing buyer' basis. On the contrary, it was purchased at a higher value by one government entity from another statutory body as part of a corporate rescue.

[71] The second comparable — empty land is a land bearing the title particulars of HSD 13568 PT 14885 Presint 2, Bandar Putrajaya, Putrajaya ('second comparable empty land'). The date of transfer for this comparable was 28 May 2014. It was stated in the JPPH valuation report that the seller of this property was Putrajaya Holdings Sdn Bhd and the buyer is Gerbang Alaf Restaurants Sdn Bhd, which was previously known as Golden Arches Restaurant Sdn Bhd as stated in the valuation report (see: exh 6, p 113).

[72] The third comparable — empty land is a land bearing title particulars GRN 817 Lot 29 Presint 2, Bandar Putrajaya, Putrajaya ('third comparable — empty land'). The date of transfer for this comparable was 7 February 2014. It was stated in the JPPH valuation report that the seller of this property was Putrajaya Holdings Sdn Bhd and the buyer was Shapadu Boulevard Sdn Bhd (see: exh 6, p 114).

[73] Even though the second and third comparables were successfully transacted, I am of the view that they are still not good comparables as the defendant had failed to consider that both transactions of the property were made seven years before the sale which is the subject matter of the proceeding.

[74] I noticed that the defendant had made unexplained adjustments of 10% for the time factor. However, neither of these adjustments was ever explained in their valuation report.

[75] The fifth comparable — Menara MRCB @ Putrajaya is of a building bearing title particulars of GRN 803, Lot 19 Presint 2, Bandar Putrajaya, Putrajaya ('Menara MRCB'). The date of transfer for this comparable was 13 June 2016. It was stated in the JPPH valuation report that the seller of this property was MRCB Putra Sdn Bhd and the buyer was PERKESO (see: exh 6, p 116).

[76] Although the transaction for the fifth comparable — Menara MRCB @ Putrajaya had fallen through, I find that only the land was transacted on the date of the transaction of MRCB in 2016, and the building was in fact, only completed in 2018, as confirmed in MRCB's annual reports for 2016 and 2018.

[77] The defendant has sought to characterise the property as a 'special purpose building' to then justify the use of this comparable which the defendant and/or JPPH say is also a special purpose building.

[78] This is clearly misguided because I view that the property is a simple office building and there is nothing special about it. Therefore, there is no reason to use a special purpose building as a comparable.

[79] Further, insofar as special purpose buildings and the fifth comparable is concerned, the following should be noted:

(a) the fifth comparable is a special purpose building, and it is in fact a bespoke (*yang ditempah khas*) building that was made with specifications tailored to the preference of the particular buyer's specifications;

(b) bespoke properties are properties that any purchaser or owner-occupier is willing to pay more than the rate of construction to fit in their likings and custom specifications that they want to the building;

(c) a specialised property, that is defined under the, Malaysian Valuation Standards as buildings with a single occupation and serves the purpose that the buildings were made, such as hospitals, schools, colleges and museums;

(d) the present case involves the purchase of an existing building with no special request or specification, nor was the plaintiff involved in its construction; and

(e) the property is simply a commercial/office building. It is neither a prestigious bespoke nor specialised buildings with only a single occupation, as claimed by the defendant.

[80] As for the eight comparable is concerned, the transaction was made in 2011 which can be considered as the peak of the economy, and I view that it would be unfair or at the disadvantage of the plaintiff for the valuation to not take into account the pandemic in late 2019 to 2021 in assessing the value of the property.

COST METHOD

[81] Based on the Malaysian Valuation Standards a cost method is a valuation method that depends on the cost of construction of a new equivalent building and the estimated for physical deterioration, functional obsolescence and economic obsolescence in using the cost method.

[82] Given the above, I am of the view that the cost method is not suitable to be used in the instant case because:

(a) the property was completed in 2011;

(b) the *JUBM & Arcadis Construction Cost Handbook on Construction Cost for Kuala Lumpur* relied on the defendant in their valuation report was published in 2021 (with a cost at levels as of the fourth quarter of 2020);

(c) the 2020 cost of construction of buildings some ten years after the building was completed cannot by any measure be the appropriate barometer of the cost of construction in 2011;

(d) further, JPPH purported to make a 10% adjustment on the costing but without any explanation as to why and how it opted that 10% figure. There is nothing in JPPH's valuation to show that the difference in cost (eg material, workmanship etc) between 2011 and 2021 was only 10%; and

(e) there is no discounting for deterioration or for that matter the serious pandemic in late 2019 into 2021 which seriously disrupted trade as well as supply chain issues (ie the inaccessibility to raw materials, steel supply, and rising cost of fuel) arising therefrom.

[83] Based on the above deficiencies, I am of the view that the cost method is inappropriate and should not have been used. The use of this inappropriate method coupled with the failure to make and explain necessary adjustments has resulted in a seriously inflated and defective valuation.

INVESTMENT METHOD

[84] The defendant's valuer had also purportedly adopted the investment method in determining the 'market value' at the time when the valuation report was prepared but I find it questionable as it was only disclosed in the defendant's affidavit in reply (3) for the first time.

[85] A table on the calculation based on investment method was produced by the defendant's valuer as exh MIN1. It is to be noted that the 'Tarikh Nilaian Semasa' is stated as 6 November 2020. Whilst in fact, the valuation report stated that the valuation date was 13 December 2021.

[86] Therefore, I am of the view that whether all three methods of determining the market value relied on by the defendant's valuer indeed took place on the same day is questionable. The discrepancy here suggests that the defendant had not carried out a valuation based on investment method at all.

[87] The defendant's valuer had merely tendered the table without affording any explanation and justification as to how the calculation based on investment method was derived at. In contrast, I find that the plaintiff's valuer had

provided all the explanation required to explain how and why the property is valued at RM170m (see: exh P12 in E10 on pp 40, 41, 42 and 70).

[88] All in all, I find that the defendant had completely ignored contemporaneous factual evidence of value and instead purports to rely on opinion evidence.

[89] The opinion evidence relied on by the defendant does not meet the basic requirements such as the employment of the cost method as the primary method and the employment of other method only when justified.

[90] Even when using the comparison method, I find that the defendant relies on unsuitable or inappropriate comparables.

[91] Taking into consideration the practicality of the situation, this court takes into cognisance the following facts:

(a) the property was a distressed property that was placed under public auction at the reserved price of RM170m which is far lower than the purported 'market value' as determined by the defendant or the defendant's valuer;

(b) even at that reserved price of RM170m and two other subsequent public auctions (in which case the reserved price was reduced by 10% each time) there was neither an interested nor a willing buyer motivated enough to purchase it at the respective reserved price;

(c) the valuation for the reserved price was conducted in 2018 prior to the Covid-19 pandemic;

(d) approximately a year after the last auction, on 24 July 2020 a willing buyer (Bestinet) was motivated but not compelled to buy at the reserved price of RM170m made an offer to purchase the property at RM115m which the price then revised to RM117m;

(e) the agreed sale price of RM117m between a willing seller who was neither overly eager nor forced to sell at that price nor prepared to sell at a price not considered reasonable in the current market and a willing buyer motivated enough to purchase at that price was made at arm's length as the parties are not related; and

(f) the occupancy rate for the property before the Covid-19 pandemic was only at 47% occupied by two tenants as evident from the plaintiffs valuation report and as of today, the occupancy rate of the property has dropped to 0% as the term of the tenancy has come to an end for one tenant and the other tenant had unilaterally determined the tenancy.

A CONCLUSION

[92] Premised on the aforesaid reasons, this court is of the view that it is therefore illogical that the 'market value' as assessed by JPPH which is far higher than the amount anyone is willing to pay in an auction is reflective of a realistic
B 'market value', a willing buyer and willing seller is ready to transact at without any compulsion bearing in mind the 'market value' as assessed is a value after the pandemic, when businesses and general economy are struggling to pick up and normalise again.

C **[93]** This court views that the sale price of RM117m is the 'market value' as spoken by the 'market' in general. The present owner constitutes 'the market' and therefore is prepared and motivated to sell at the best price (ie RM117m) attainable in the open market.

D **[94]** Furthermore, the sale was through a receiver appointed by the court who has duties and obligations to obtain the best possible price. In this regard, it is noteworthy that a 'reserve price' is fixed with the court's concurrence based on valuation(s) and not some figure plucked out of the sky.

E **[95]** As such, I allowed the plaintiff's appeal (OS) (encl 1) prayer (1), (2) and (3). The stamp duty on the deed of assignment should be on the value amounting to RM117m as stated in the principal SPA between the vendor and Bestinet dated 6 November 2020.

F **[96]** The defendant is to pay costs to the plaintiff RM5,000 without the allocator fee.

Originating summons allowed with costs of RM5,000 to be paid by defendant to
G *plaintiff without allocator fee.*

Reported by Dzulqarnain Ab Fatar

H

I